

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

IN RE:
PETER PAUL MITRANO
Debtor

CASE NO. 10-20476
CHAPTER 13

TRUSTEE'S OBJECTION TO VENUE

This day comes the Trustee and objects to venue of this petition.

In support of this objection, the trustee asserts as follows:

1. Venue is proper in the district “in which the domicile, residence, principal place of business in the united States, or principal assets in the United States” of the debtor have been located for the greatest portion of the 180 days immediately preceding the filing. 28 U.S.C. §1408. The debtor asserts his domicile is Virginia, as noted on his petition for “County of Residence or Principal Place of Business.” Two of the debtor’s three scheduled parcels of real estate are located in Virginia. The third piece is in New Hampshire The debtor is simply in West Virginia as a result of a prison sentence. As the answer to Question 15 of the Statement of Financial Affairs asserts, the debtor lived at 4912 Oakcrest Drive, Fairfax, Va., prior to his incarceration beginning with New Hampshire from October 22, 2009. According to the Answer to Question 15, the debtor has been in federal prisons in Oklahoma, Georgia, New and now West Virginia. The incarceration in West Virginia does not provide necessary elements to support the filing in this venue. In *In re McDonald*, 219 B.R. 804 (Bankr. W.D. Tenn.1998), the Court held that venue for Chapter 13 debtor who lived in Arkansas but worked in Memphis, Tennessee, was in Arkansas. The Court noted that it would be more convenient for the debtor to have the bankruptcy case in Memphis, where he worked, but the Court transferred venue to the Eastern District of Arkansas concluding that “a salaried individual debtor’s place of employment does

not equate to the ‘place of business’” specified in the statute. 219 B.R. at 805.

2. The debtor’s principal assets are not located in West Virginia. As noted, *supra*, the real estate is located in Virginia and New Hampshire. It appears that other than his prison account of approximately \$75.00, all of the debtor’s assets are located in Virginia or New Hampshire.

3. There is no showing that venue is proper because of the convenience of the parties or in the interests of justice. Venue of a Chapter 13 case may be changed “in the interest of justice or for the convenience of the parties.” 28 U.S.C. § 1412. In the instant case, there does not appear to either factor which would allow the case to remain in the Southern District of West Virginia. The debtor requested to appear by phone for the 341 hearing and could appear by phone in any jurisdiction. The debtor’s plan does not meet the standards of confirmation. The difference between the value of the assets and the statutory exemptions would indicate that a liquidation of assets needs to be accomplished; and since the real estate, the major asset, is in Virginia and New Hampshire, creditors are better served by the case being transferred to Virginia and converted to Chapter 7.

WHEREFORE, the Trustee prays that the Court will dismiss the petition for improper venue or transfer the case to the proper bankruptcy court in Virginia.

HELEN M. MORRIS,
CHAPTER 13 TRUSTEE

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that service of the foregoing TRUSTEE'S OBJECTION TO VENUE was made by mailing by U.S. first class mail a true copy thereof to the following with postage pre-paid, on this 21st day of July 2010.

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